

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AMERICAN NORTHWEST
DISTRIBUTORS, INC.,

Plaintiff,

v.

FOUR ROSES DISTILLERY, LLC,

Defendant.

CASE NO. C22-1265-JCC

ORDER

This matter comes before the Court on Defendant's motion to amend its answer and add a counterclaim (Dkt. No. 17). For the reasons described below, the motion is GRANTED in part and DENIED in part.

Under the Federal Rules of Civil Procedure, a party may amend its pleading with the Court's leave, and the Court should "freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). Plaintiff largely does not object to Defendant's request, except for leave to add the affirmative defense of improper venue. (Dkt. No. 18 at 1.) A defense of improper venue is waived if a party fails to make a motion raising the defense under Rule 12(b), or include it in either a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course. Fed. R. Civ. P. 15(h). And here, because Defendant failed to include this defense in its responsive pleading, it waived this affirmative defense.

1 Nevertheless, Defendant argues it should be allowed to add the defense by amendment.
2 (Dkt. No. 19 at 1.) But this does not comport with the applicable rules for amending pleadings,
3 which indicate that the defense is waived if the responsive pleading is not amended *as a matter*
4 *of course*, which is not the case here (where Defendant seeks leave pursuant to Rule 15(a)(2)).
5 See Fed. R. Civ. P. 15(a)(1); (Dkt. No. 17 at 1). Defendant notes that it seeks leave to add the
6 defense after discovering new information during discovery. (Dkt. No. 19 at 2.) But it provides
7 no support for the proposition that this provides Defendant an opportunity to raise an already
8 waived defense. Thus, Defendant has waived the defense of improper venue.

9 For the foregoing reasons, Defendant's motion (Dkt. No. 17) is GRANTED in part and
10 DENIED in part. Defendant is ORDERED to file its amended answer in the form proposed,
11 (Dkt. Nos. 17-2, 17-3), within seven (7) days of this Order, ***excluding*** the affirmative defense of
12 improper venue.

13 DATED this 16th day of May 2023.

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A handwritten signature in black ink, appearing to read "John C. Coughenour", is written over a horizontal line.

John C. Coughenour
UNITED STATES DISTRICT JUDGE